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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NO. 440 OF 2008**  
**CUTTACK, THIS THE 11<sup>th</sup> DAY OF September, 2009**

Soumitra Sengupta.....Applicant

Vrs.

Union of India & Ors .....Respondents

**FOR INSTRUCTIONS**

1. Whether it be referred to the Reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

  
(C.R.MOHAPATRA)  
MEMBER (ADMN.)

  
(K.THANKAPPAN)  
MEMBER (JUDL.)

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**ORIGINAL APPLICATION NO. 440 OF 2008**  
**CUTTACK, THIS THE 11<sup>th</sup> DAY OF September, 2009**

**CORAM :**

HON'BLE MR. JUSTICE K.THANKAPPAN, MEMBER(J)  
HON'BLE MR. C.R.MOHAPATRA, MEMBER(A)

.....  
Sri Soumitra Sengupta, aged about 31 years, son of Satyabrata Sengupta, Khamlata Palace, Flat No. A/105, Vivekananda Marg, Bhubaneswar-751002.

...Applicants

By the Advocates – M/s. G.A.R.Dora, G.R.Dora, J.Lenka

**-Versus-**

1. Union of India represented through the Secretary to govt. Ministry of Labour and Employment Department, Govt. of India, New Delhi.
2. Director, Employees State Insurance Corporation, Panchadeep Bhawan, C.I.G.Road, New Delhi.
3. Regional Director, E.S.I.Corporation, Regional Office, Panchdeep Bhawan, Unit-IX, Bhubaneswar-22.
4. M.M.Nandi, U.D.C., Office of the Regional Director, E.S.I.Corporation, Regional Office, Panchadeep Bhawan, Unit-XI, Bhubaneswar-22.

...Respondents

By the Advocates – M/s. P.P.Ray, D.P.Ray,  
Mr. Bibhu Prasad Tripathy (For R-4)

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## ORDER

**Shri Justice K. Thankappan, Member (J):-**

The applicant has filed this O.A. challenging a circular dated 16.10.2008 by which the vacancy position, eligibility condition and scheme for departmental examination for the post of Upper Division Clerk ('UDC', in short) have been prescribed. The applicant prays in the O.A. to have a direction to Respondent Nos. 1 to 3 to treat him as UDC at Orissa Region though he was transferred from Maharashtra Region after qualifying to be promoted as UDC before his transfer.

2. The case of the applicant is that while working as Lower Division Clerk ('LDC', in short) in Maharashtra Region he appeared at the Departmental Limited Competitive Examination 27.11.2006 for promotion to the post of UDC and was declared successful as per order dated 30.3.2007. However, the applicant had filed an application for inter-regional transfer from Maharashtra to Orissa on 29.03.2007. In the light of above request the applicant was relieved from Maharashtra Region w.e.f. 31.5.2007 as per order dated 9.05.2007. The applicant joined Orissa Region as an LDC as his transfer order describes

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him as LDC. However, after joining as LDC, the applicant again appeared in the Limited Departmental Competitive Examination held on 24.11.2007 for promotion to the post of UDC and he was declared successful as per the office order dated 25.03.2008. Thereafter the impugned circular dated 16.10.2008 has been issued by the Department showing the vacancy position of UDC and the eligibility criteria. Aggrieved by the said circular, the applicant has filed this O.A.

3. This Tribunal admitted the O.A. and notice was ordered to the Respondents. Pursuant to the notice issued from this Tribunal, a counter reply has been filed for and on behalf of the Respondents.

4. The stand taken in the reply statement is that as the applicant was allowed to join as LDC in the Orissa Region, he was treated as junior-most in the LDC cadre of the Orissa Region. The further stand taken in the reply statement is that as the applicant was working as LDC, he applied to appear at the Limited Departmental Competitive Examination for promotion to the post of UDC which was held on 24.11.2007 and as per the result of the examination, applicant was also declared successful. Hence, on the transfer of the applicant from

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Maharashtra Region to Orissa Region, he should be treated as junior-most in the cadre of LDC. If so, it is stated in the counter-reply that the stand taken by the Department is justifiable and as per the rule or the instructions being issued by the Department from time to time, to acquire any qualification or to be eligible to appear for promotion to the higher cadre, a person should continue three years in the lower post in the concerned Region. If so, the O.A. is devoid of any merit.

5. In the light of contentions raised for and on behalf of the applicant as well as the Respondents, the question to be decided is whether the applicant is justified in approaching this Tribunal or not? The fact that the applicant was working in Maharashtra Region as an LDC during 2006-07 and the applicant applied for inter-regional transfer as per his application dated 29.03.2007 is not in dispute. However, the applicant appeared in the departmental examination for promotion to the UDC cadre at Maharashtra Region on 27.11.2006 and the result was declared on 30.03.2007, which would show that the applicant has been empanelled for promotion to the post of UDC at Maharashtra Region. It is also to be noted that the applicant was relieved as per the order dated 9.5.2007 (Annexure-A/5) w.e.f. 31.5.2007. The second

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column of Annexure-A/5 would show the name of the applicant and his designation as UDC, though column 4 of the order would show that he was to join as LDC,R.O., Bhubaneswar, Orissa Region, w.e.f. 31.5.2007. But Annexure-A/6 memorandum dated 31.5.2007 would show that the applicant was relieved of his duties as UDC w.e.f. 31.5.2007 afternoon with instruction to report to Regional Office, Bhubaneswar, Orissa Region. All these papers would show that the applicant was working as UDC at Maharashtra Region and that apart, the order dated 30.03.2007, Annexure-A/2 would show that the applicant had qualified in the LDCE for promotion to the post of UDC subject to condition that he would fulfill the eligibility conditions and was not otherwise disqualified for promotion. This order was passed by the Joint Director, (Recd.). Further, it could be seen from the order passed by the Deputy Director (Administration) as per Annexure-A/3 that the Additional Commissioner had ordered the promotion of the applicant as UDC on the basis of Limited Departmental Competitive Examination held on 27.11.2006 and it is further stated in paragraph 5 of Annexure-A/3 that regular promotion would take effect from 3.4.2007, which means that

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even at the time of relieving order of the applicant, as per Annexure-A/6 dated 31.5.2007, the applicant was an UDC.

6. Looking from the above angles, only on the reason that the applicant was allowed to join in Orissa Region as LDC as per Annexures-R/6 and R/7, we cannot agree with the stand taken by the Respondents that the applicant shall be treated only as LDC on transfer to Orissa Region. It is also to be noted that as per Annexure-R/5, memorandum dated 25.5.1990, and memorandum dated 8.2.1991 in the case of inter-regional transfer the employee will be placed as junior-most in the post held by him on regular basis in the respective cadre in the region to which he is transferred. It means that as the applicant has been transferred after he was promoted as UDC or atleast he was empanelled for promotion to the post of UDC, he cannot be treated as an LDC in the Orissa Region. Hence we are of the view that the applicant is entitled to be treated as UDC in the Orissa Region provided he shall be treated as junior-most in the UDC cadre. If so, the stand taken by the Respondents in the counter affidavit is not sustainable and the applicant is entitled to be declared as UDC in Orissa Region.

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7. The next question to be considered is whether Annexure-A/8 would be interfered by this Tribunal or not ? A reading of Annexure-A/8 would show that the Limited Departmental Competitive Examination was scheduled to be held for promotion to the posts of LDC, UDC and Head Clerks/Assistants during the recruitment year 2007-08 as per the terms and conditions stipulated therein. A further reading of Annexure-A/8 would show that there are only four posts of UDC out of which two are reserved for Scheduled Caste, one for Scheduled Tribe and one for General.

8. In the above circumstances, we are not in a position to hold whether the position now canvassed by the applicant would help him to reserve any post as contemplated under Annexure-A/8. We have already come to a conclusion that the applicant can be treated as UDC with the lowest ranking in the cadre of UDC in Orissa Region. In this context, we are also not ignoring the fact that the applicant has already appeared in the Limited Departmental Competitive Examination held on 24.11.2007 for promotion to the post of UDC. The result of the examination also would show that the applicant is eligible to be promoted as UDC, but subsequent examination or result derived therefrom is not ground for the

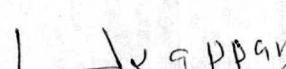
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Respondents to canvass the position that the applicant should be treated only as an LDC in the Orissa Region.

9. With the above clarification and other findings entered in this order, we are disposing of this O.A. It is made clear that the grievances projected by the applicant against Annexure-A/8 would depend on further materials to be analyzed regarding the vacancy position as well as the seniority position of the applicant in the grade of UDC. Hence, we are not interfering with Annexure-A/8.

10. With the above observations and findings entered, the O.A. is disposed of. No costs.

  
(C.R. Mohapatra)  
MEMBER (ADMN.)

  
( K. Thankappan )  
MEMBER (JUDL.)

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